

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EDWARD H. ROBERTS
Claimant

VS.

MIDWEST MINERALS, INC.
Respondent

AND

**MIDWEST BUILDERS CASUALTY
MUTUAL COMPANY¹**
Insurance Carrier

Docket No. **1,028,985**

ORDER

Respondent and insurance carrier (respondent) requested review of Administrative Law Judge Thomas Klein's October 9, 2012 Post-Award order for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

APPEARANCES

Richard D. Loffswold, Jr., of Girard, Kansas, appeared for claimant. Wade A. Dorothy, of Overland Park, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board has reviewed the stipulations listed in the Award, as well as the Post-Award medical hearing transcript dated August 3, 2011, in addition to the attached exhibits.

ISSUE

Respondent asserts Judge Klein erred in ordering it to provide claimant various tools and devices (tools) as reasonable and necessary medical care. Claimant requests that Judge Klein's Post-Award order be affirmed. Although Judge Klein approved claimant's attorney's "fee retainer," the parties' briefs confirm there is no present dispute concerning post-award attorney fees, so it is not an issue for this appeal.

¹ A Kansas Court of Appeals case and prior Appeals Board decisions list Builders Assoc. Self-Insurers Fund of Kansas as the insurance carrier. The correct insurer is Midwest Builders Casualty Mutual Company.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record, the parties' stipulations, and considered the parties' briefs and arguments, the Board finds and concludes:

On February 18, 2005, claimant suffered traumatic amputation of his right arm. He required a prosthetic arm. Claimant returned to work for respondent, but retired about two years before the Post-Award hearing. While employed, respondent purchased claimant tools, such as vise grips and crescent wrenches, that attached to his prosthetic arm. He used such tools at work and at home. After retirement, claimant engaged in various activities, including metal work, welding, using drill presses and grinders, automotive work (including rebuilding a car), work on his boat and work around the house.

Dr. Annie Venugopal's June 14, 2010, prescription noted claimant needed the following prosthetic tools to "help maintain his home and vehicles"²: nail set, "TRS Lamprey Gun Turret," standard and metric box end wrench sets, center punch, all-purpose crank adapter and tool cradle standard shank. These tools cost \$9,394.72.

Michael Harrington, of Hanger Prosthetics & Orthotics, noted in a September 8, 2010 letter that claimant needed the tools "to perform his own home, car and boat maintenance as well as staying [sic] active in his community by attending events."³ Mr. Harrington's letter indicated the tools would assist claimant in activities of daily living, vocational tasks and recreational tasks. Mr. Harrington also stated the Gun Turret would allow claimant to engage in recreational target shooting with friends and family.

Claimant wanted the nail set to do finish carpentry. He wanted the all purpose crank adapter to "go fishing."⁴ Claimant testified the gun turret would not be used just to cradle a gun, but also to hold pipe or conduit.

Medical care under K.S.A. 2004 Supp. 44-510k must be "necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award." A doctor's prescription that a claimant would benefit from an item is not dispositive in proving that the item is medical care. If otherwise true, any expense would be considered medical care as long as it was doctor-recommended.⁵

² P.A.H. Trans., Cl. Ex. 1 at 2.

³ *Id.*, Cl. Ex. 1 at 3.

⁴ *Id.* at 13.

⁵ *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 788-89, 935 P.2d 1083 (1997); *Tissue v. Tech, Inc.*, No. 267,507, 2005 WL 2181217 (Kan. WCAB Aug. 29, 2005) ("[A] simple written prescription does not transform an item into a medically reasonable or necessary device.").

Case law does not precisely define medical care or treatment. Treatment is "[a] broad term covering all the steps taken to effect a cure of an injury or disease; including examination and diagnosis as well as application of remedies."⁶ Medical compensation under K.S.A. 2004 Supp. 44-510h(a) includes "medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation" to obtain medical treatment. An "apparatus" includes an "artificial member."⁷ The Board views medical care and medical treatment as synonymous.

It is problematic to "separate what is a reasonable medical necessity from what is dictated by convenience and/or lifestyle [because] these two categories can sometimes overlap."⁸ A claimant's "greater ease and comfort" and "all expenses associated with the accommodations that a disability may require" are not what the legislature envisioned as reasonable and necessary treatment.⁹

While the determination is fact-driven and situational, requests found to be reasonable and necessary medical treatment include modification to a home,¹⁰ placement in an assisted living facility,¹¹ assistance for hygiene and grooming,¹² a stair lift,¹³ modification to a vehicle to accommodate a claimant's injury,¹⁴ a hot tub,¹⁵ a computer,¹⁶ a mattress,¹⁷ and a custom-made brassiere.¹⁸

⁶ *Hedrick*, 23 Kan. App. 2d at 785 (quoting Black's Law Dictionary 1502 (6th ed.1990)).

⁷ K.A.R. 51-9-2.

⁸ *Butler v. Jet TV*, No. 106,194, 1998 WL 229860 (Kan. WCAB Apr. 14, 1998).

⁹ *Hedrick*, 23 Kan. App. 2d at 787.

¹⁰ *Froese v. Trailers & Hitches, Inc.*, No. 1,036,333, 2010 WL 3093219 (Kan. WCAB July 27, 2010).

¹¹ *Butler v. Jet TV*, No. 106,194, 2004 WL 1058372 (Kan. WCAB Apr. 16, 2004).

¹² *Morey v. Via Christi Health System*, No. 1,027,871, 2006 WL 2632034 (Kan. WCAB Aug. 14, 2006).

¹³ *Jardan v. Wal-Mart*, No. 1,048,563, 2012 WL 3279494 (Kan. WCAB July 23, 2012).

¹⁴ *Froese v. Trailers & Hitches*, No. 1,036,333, 2008 WL 651685 (Kan. WCAB Feb. 29, 2008).

¹⁵ *Fernandez v. Safelite Auto Glass*, No. 244,854, 2002 WL 31828620 (Kan. WCAB Nov. 20, 2002).

¹⁶ *Fletcher v. Roberson Lumber Co.*, No. 231,570, 1999 WL 195653 (Kan. WCAB Mar. 30, 1999).

¹⁷ *Conner v. Devlin Partners, LLC*, No. 1,007,224, 2005 WL 831913 (Kan. WCAB Mar. 11, 2005).

¹⁸ *Gorden v. IPB, Inc.*, Nos. 84,110 & 84,173 (Kansas Court of Appeals unpublished decision dated October 27, 2000).

Examples of requests that were denied as reasonable or necessary medical treatment under the particular facts of each case include a larger car,¹⁹ hospital expenses for an overdose of pain pills,²⁰ payment of utility bills,²¹ housekeeping,²² home internet service,²³ and a motorized scooter.²⁴ A motorized scooter that kept a claimant working, but would not cure or relieve his injury, was not medical treatment.²⁵ A scooter would make a claimant's life "more full," but was not medically necessary.²⁶

In this case, there was no expert medical or lay testimony demonstrating that the tools would cure or relieve the effects of claimant's injury. The limited medical evidence establishes that the tools would help claimant maintain his home, car and boat, and help him engage in recreational activities, including shooting and fishing. The tools will likely enhance his life and make him happier in terms of convenience and lifestyle, but the tools are not medical treatment and they do not address medical needs. The tools will not cure or relieve the effects of his injury. The prosthetic arm was a necessary result of his injury, but the additional tools are not the necessary result of his injury. Claimant's *want* for specialized tools to perform woodworking, car repair, metal work, sport shooting and fishing with greater ease does not equate with a reasonable medical *need* for such items. While claimant wants his prosthesis to be enhanced or upgraded to accommodate what he wants to do, "[w]hat is reasonable does not necessarily mean what is the very best or the very latest technology."²⁷

The tools could be viewed as medical care as an apparatus. However, respondent provided claimant with an apparatus - his prosthetic arm, and has repaired it as needed. The specialized tools are more akin to apparatus accessories or add-ons that go above and beyond the respondent's duty to provide an apparatus.

¹⁹ *Hedrick*, 23 Kan. App. 2d at 787 ("The natural and ordinary meaning of 'medical treatment' is not so broad as to include an automobile purchased to afford an individual 'independence in transportation.'").

²⁰ *Carr v. Unit No. 8169*, 237 Kan. 660, 666, 703 P.2d 751 (1985).

²¹ *Bhattarai v. Taco Bell*, No. 261,986, 2002 WL 1838755 (Kan. WCAB July 26, 2002).

²² *Morey v. Via Christi Health System*, No. 1,027,871, 2006 WL 2632034 (Kan. WCAB Aug. 14, 2006).

²³ *Thompson v. Renzenberger*, No. 1,025,518, 2007 WL 2586176 (Kan. WCAB Aug. 28, 2007).

²⁴ *Tissue v. Tech, Inc.*, No. 267,507, 2005 WL 2181217 (Kan. WCAB Aug. 29, 2005).

²⁵ *Abbey v. Cleveland Inspection Services, Inc.*, No. 208,691, 2001 WL 507184 (Kan. WCAB Apr. 30, 2001).

²⁶ *Tissue v. Tech, Inc.*, No. 267,507, 2005 WL 2181217 (Kan. WCAB Aug. 29, 2005).

²⁷ *Albright v. Kansas Van and Storage*, No. 152,410, 2012 WL 5461480 (Kan. WCAB Oct. 17, 2012).

Judge Klein's Post-Award order is reversed. Claimant is not entitled to the tools prescribed by Dr. Venugopal.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award order of Administrative Law Judge Thomas Klein dated October 9, 2012, is reversed.

IT IS SO ORDERED.

Dated this _____ day of November, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard D. Loffswold, Jr., Attorney for Claimant
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Thomas Klein, Administrative Law Judge